



July 26, 2008, is supported in this record and affirms that finding by the ALJ. While it is clear that claimant experienced prior injuries to the shoulder, the fact remains that claimant performed his regular job until the work-related injury on July 26 and was unable to do so after the accident. The record is not clear as to when the series of dislocations actually occurred. Perhaps at the time of the regular hearing that can be clarified. The incident on October 14, 2008, remains a question to be answered by an examining or treating physician. This record does not state the extent of the injuries suffered by claimant on that date or the effect that incident had on the right shoulder, another question for the future. The record also appears to be incomplete as to medical reports from the various emergency rooms that treated claimant and as to the mysterious May 5, 2008, medical report of Dr. Seeman.<sup>1</sup>

On May 14, 2009, the ALJ also ordered claimant undergo an evaluation by the first available doctor at the Dickson Dively Orthopedic Clinic in Leawood, Kansas. The doctor was asked to render an opinion as to what additional medical care was “required to cure and relieve the effects of a 7/26/08 work related injury to claimant’s right shoulder.”<sup>2</sup>

Dr. Thomas P. Phillips issued a report to the ALJ on June 29, 2009. The ALJ issued an order on July 30, 2009, in which the ALJ found claimant’s need for medical treatment at that time did not stem from his injury at work but, instead, was more likely a natural and probable consequence of an earlier non work related injury. Consequently, the ALJ denied claimant’s request for medical benefits and also discontinued the payment of temporary total disability benefits.

Claimant appealed the July 30, 2009, Order Denying Medical Treatment to the Board. Board Member David Shufelt affirmed the ALJ after finding that claimant failed to prove his need for medical treatment was due to an accidental injury that arose out of and in the course of employment with respondent. Regarding Dr. Phillips’ medical report, Mr. Shufelt wrote:

Dr. Phillips opined that the prevailing factor responsible for claimant’s shoulder problems is the injuries of April and May 2008 preceding the alleged work-related injury of July 2008. He further opined that there is a 90 percent chance of recurrent subluxation/dislocation of the shoulder after the initial event.<sup>3</sup>

On December 17, 2009, claimant obtained further information from Dr. Phillips. With that new information, claimant obtained another preliminary hearing to request the

---

<sup>1</sup> *Coffman v. Osage Nursing LLC*, No. 1,042,801, 2009 WL 2480262 (Kan. WCAB July 31, 2009) at 4-5.

<sup>2</sup> Order Referring Claimant for Independent Medical Evaluation, May 14, 2009, at 1.

<sup>3</sup> *Coffman v. Osage Nursing LLC*, No. 1,042,801, 2009 WL 3191392 (Kan. WCAB Sept. 30, 2009) at 2.

reinstatement of his benefits. Following that hearing, the ALJ entered the April 6, 2010, Order, in which the ALJ granted claimant's request for medical benefits. The ALJ reasoned, in part:

In this instance, while Dr. Phillips attributed claimant's need for treatment chiefly to preexisting non work related injury and believed that any activity could aggravate it, claimant's injury was in fact aggravated and his condition intensified by lifting a steel table on behalf of the respondent, which the Court finds to be a hazard of his employment. Mr. Coffman testified he was able to resume his normal duties after his nonwork shoulder injuries in March [sic] of 2008, without pain. After his shoulder was reinjured in July of 2008, he required additional medical attention and is unable to perform his job duties.<sup>4</sup>

Respondent argues the Board should reverse that Order as claimant allegedly (1) did not sustain an accident as defined by the Workers Compensation Act and (2) did not prove he injured his right shoulder at work. Respondent argues there is no relationship between claimant's work and his right shoulder condition and, likewise, no relationship between his work and present need for medical treatment. Respondent maintains any activity would have aggravated claimant's right shoulder symptoms and, furthermore, any aggravation at work would have only been temporary.

Claimant, on the other hand, requests the Board to affirm the April 6, 2010, Order.

The issue before the Board on this appeal is whether claimant's present need for medical treatment to his right shoulder stems from an accidental injury that arose out of his employment with respondent.

### FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member finds and concludes:

Claimant worked for respondent as a cook. On July 26, 2008, claimant was pulling on a steel table to clean underneath it when his right shoulder popped and he immediately felt shoulder pain. Claimant immediately reported the incident to respondent, and he was sent to an emergency room for treatment. At the hospital, claimant was given a sling and medication and was told he had a partial dislocation.

There is no dispute that claimant experienced right shoulder problems before July 26, 2008. The medical records reveal that on April 28, 2008, claimant saw his personal physician, Dr. James Seeman, for right shoulder pain. The doctor noted that claimant had fallen upon a concrete surface and had injured his right shoulder four days

---

<sup>4</sup> ALJ Order (April 10, 2010) at 2.

before their meeting. Dr. Seeman concluded claimant probably had a ligamentous injury. Consequently, the doctor recommended medications, ice, and babying the shoulder. Moreover, the doctor noted he would give claimant's shoulder time to heal before ordering expensive tests and making referrals.

Claimant's attorney represented that claimant next sought medical treatment on May 5, 2008.<sup>5</sup> But the notes from that visit are not in the record. According to claimant, his shoulder symptoms resolved after his initial contact with Dr. Seeman. In any event, claimant returned to work for respondent and performed his regular job duties.

Following the July 26, 2008, incident at work, respondent referred claimant to Dr. Seeman for treatment. The doctor's July 29, 2008, office note states claimant injured his shoulder at respondent's nursing center while pulling on a large table. Moreover, those notes indicate claimant had subluxation of the shoulder and the doctor planned to limit claimant's use of his right arm and to obtain an orthopedic evaluation.

Despite his injury, claimant continued working until the latter part of August 2008, when he was removed from respondent's work schedule due to his injury. On August 29, 2008, Peggy Stanley, the safety director of Americare, telephoned claimant. She advised, in essence, that claimant had at most only temporarily aggravated his shoulder and, therefore, he would receive no additional medical care from respondent for his right shoulder.

Claimant describes a sharp contrast in his shoulder symptoms following the July 2008 incident at work. He testified that immediately before that incident he was not having any pain or popping in his shoulder. But after the incident he has experienced ongoing pain around his right shoulder and popping. He maintains he now has difficulty lifting his right arm and that his arm feels as if it is dislocating from its joint when he lifts his arm too high. And he maintains he has sought emergency room treatment on several occasions when his arm has fallen out of its socket.<sup>6</sup>

Dr. Seeman's notes from April 2008 display the stark contrast between claimant's condition in April 2008 as opposed to July 29, 2008. At the April 28, 2008, visit, the doctor recommended some anti-inflammatories and suggested that claimant baby his shoulder. Dr. Seeman wrote, in part:

Jason is seen today for right shoulder pain. He still thinks his back hurts from his previous injury at Osage Nursing Center but his shoulder is not Workman's Comp. He says four days ago, he fell on it. He was sort of protecting his head when he fell. I did not ask him how come he fell. He hit pretty hard right on the shoulder and it

---

<sup>5</sup> P.H. Trans. (February 20, 2009) at 8.

<sup>6</sup> *Ibid.*, at 19-20.

hurts ever since. He fell on a concrete surface and he was in the standing position. He did not fall off a scaffolding or any other height. He describes no numbness or tingling but he does feel a little crack in it when he lifts it up. The shoulder is tender in a very global distribution both on the interior and posterior and also at the top of the shoulder. He hurts with internal and external rotation. He has normal reflexes and strength.

ASSESSMENT: I think that probably this is just a ligamentous injury. I do not think there is any fracture.

PLAN: At this time, since he does not have information [, the plan] is sort of hold back and use some anti-inflammatories such as ibuprofen 200 three times a day. I gave him some Lortab 5's #20. I suggested ice and just a general babying of the shoulder. Then if it does not get better, we will have to pull out all the stops and get x-rays and whatever else we are led to at the time. He understands and voices his understanding that this is a procedure of waiting to see if he gets better before ordering too many expensive tests or getting referrals but that this could happen down the road.<sup>7</sup>

But at the next appointment, on July 29, 2008, the doctor noted a more serious situation and restricted claimant from using his right arm. The doctor wrote, in part:

The patient is here for problems with his right shoulder. He sustained an injury at Osage Nursing Center while pulling on a large table, he felt something happen in his shoulder and it began to hurt. He interpreted this as having come out of place. . . . He has never had anything like this before. Once he thought he was holding a coffee cup and felt like something happened in his shoulder but this not a commonly reoccurring problem and certainly this is the first time it has ever happened to such a degree.

. . .

ASSESSMENT: He had subluxation of his shoulder and that it is pretty tender and sore right now. The plan, therefore, is put him a limited work duty with no use of the right arm and after getting orthopedic consultation I called Tina at the nursing home and she said that through the company they will go ahead and arrange for orthopedics. . . .<sup>8</sup>

The record includes tape recorded telephone calls from August 2008 between claimant and Peggy Stanley, who is respondent's corporate safety director. In the first taped conversation from August 11, 2008, claimant candidly admits to previously hurting his right shoulder when he tripped and fell while carrying groceries and partially dislocating

---

<sup>7</sup> *Ibid.*, Cl. Ex. 1, at 4.

<sup>8</sup> *Ibid.*, at 3.

his shoulder. Moreover, claimant stated his doctor at that time had said surgery was probably an option but the specialist claimant contacted would not enter into a payment plan. Accordingly, claimant “let it go” until the incident at work.

Dr. Thomas P. Phillips examined claimant in late June 2009 in an independent evaluation performed on behalf of the ALJ. The doctor issued a report in which the doctor stated the prevailing factor in claimant’s right shoulder problems was his injuries in April and May 2008. In his June 29, 2009, letter to the ALJ, Dr. Phillips wrote, in part:

It is my opinion that Mr. Coffman is a 24-year-old gentleman with posterior instability of the right shoulder. From Dr. Seeman’s note of April 28, 2008, it appears that he had a significant injury to his right shoulder at that time. In the notes from St. Francis Medical Center, dated May 15, 2008,<sup>9</sup> the examining physician was able to demonstrate reproducible subluxation of the shoulder. He noted that the shoulder “stays reduced while in position of comfort”. It is, therefore, my opinion that the prevailing factor responsible for Mr. Coffman’s shoulder problems is the injuries of April and May 2008 preceding the alleged work-related injury of July 2008. In this age group, there is a ninety percent chance of recurrent subluxation/dislocation of the shoulder after the initial event.

Mr. Coffman needs an MRI of the right shoulder followed by an arthroscopic capsulorrhaphy to stabilize the shoulder. He is essentially unable to work until this surgery can be performed as any significant motion of the right arm produces the instability.

And as indicated above, the ALJ ordered claimant’s benefits discontinued after receiving Dr. Phillips’ medical report. Consequently, claimant’s attorney sought additional information from the doctor, which included confirmation that Dr. Phillips believed claimant’s injury in July 2008 aggravated his previous right shoulder problems. Respondent then obtained further comments from Dr. Phillips. The doctor unequivocally stated in a January 2010 letter that claimant would have needed reconstructive surgery before his July 2008 incident at work.

. . . In Mr. Coffman’s age group, there is a 90 percent probability of recurrent dislocation after the initial injury. Given the amount of instability noted at the time of the original injury, it is close to 100 percent. It is my opinion that Mr. Coffman would have needed reconstructive surgery due to the initial injury. With this amount of instability, essentially any activity after the initial injury would aggravate the condition.<sup>10</sup>

---

<sup>9</sup> Perhaps this is the medical consultation previously mentioned as occurring on May 5, 2008.

<sup>10</sup> P.H. Trans. (April 2, 2010), Resp. Ex. A.

### CONCLUSIONS OF LAW

The record establishes that claimant was able to work with little difficulty and few symptoms before the July 26, 2008, incident at work moving the heavy table. But after the incident at work claimant's ability to perform his work was appreciably impaired.

It is well settled in Kansas that an accidental injury is compensable under the Workers Compensation Act when the accident aggravates or accelerates an existing disease or condition. In *Strasser*,<sup>11</sup> the Kansas Supreme Court held:

The act prescribes no standard of health for workmen, and where a workman is not in sound health but is accepted for employment, and a subsequent industrial accident suffered by him aggravates his condition resulting in disability, he is not to be denied compensation merely because of a pre-existing physical condition. In other words, it is well settled that an accidental injury is compensable where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction. [Citations omitted.]

The evidence shows a stark contrast between his condition in April 2008 and on July 29, 2008, when he consulted Dr. Seeman. Moreover, the undersigned Board Member is unable to find in the conversations recorded by Ms. Stanley where claimant allegedly admitted that before his incident at work his shoulder would routinely or repeatedly dislocate. Likewise, the undersigned was unable to discern from those taped conversation that claimant had said, in essence, that he had been waiting for his shoulder to dislocate at work. Indeed, Board Member Gary Korte noted in the Board's July 31, 2009, Order that he had been unable to find such statements.

When considering the entire record compiled to date, the undersigned finds claimant aggravated his shoulder moving a table at work in July 2008. Accordingly, the claimant is entitled to receive workers compensation benefits for that injury, including reasonable and necessary medical care. It was apparent to Dr. Seeman on July 29, 2008, that claimant needed treatment from an orthopedic specialist. That treatment was never provided and that omission should now be rectified.

In summary, the April 6, 2010, preliminary hearing Order should be affirmed.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>12</sup> Moreover, this review of a

---

<sup>11</sup> *Strasser v. Jones*, 186 Kan. 507, 511, 350 P.2d 779 (1960).

<sup>12</sup> K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, rev. denied 286 Kan. \_\_\_, (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, rev. denied 271 Kan. 1035 (2001).

preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.<sup>13</sup>

**ORDER**

**WHEREFORE**, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Brad E. Avery dated April 6, 2010, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2010.

\_\_\_\_\_  
HONORABLE DUNCAN A. WHITTIER  
BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant  
Donald J. Fritschie, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge

---

<sup>13</sup> K.S.A. 2009 Supp. 44-555c(k).